

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LARRY R. KOZAK and U.S. POSTAL SERVICE,
POST OFFICE, Rockford, Ill.

*Docket No. 97-1779; Submitted on the Record;
Issued May 17, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's claim for a recurrence of disability commencing November 13, 1986 due to a June 10, 1985 employment injury.

This case has previously been before the Board on two occasions. By decision and order dated March 13, 1992, the Board found that the Office did not follow its own procedures in referring appellant to an impartial medical specialist to resolve a conflict of medical opinion on the question of whether appellant's x-rays demonstrated a subluxation of the spine, and that the Office therefore did not properly deny appellant's claim for a recurrence of disability commencing November 13, 1986 due to a June 10, 1985 employment injury.¹ On the most recent prior appeal, the Board, by decision and order dated May 1, 1996, found that the Board-certified radiologist that the Office selected as the impartial medical specialist to resolve the conflict of medical opinion regarding the existence of a subluxation of the spine, had previously reviewed appellant's x-rays for the Office for the same purpose and could not serve as an impartial medical specialist.² The Board remanded the case to the Office for referral of appellant's x-rays to a Board-certified radiologist not previously associated with the case, to be followed by an appropriate decision on appellant's claim for compensation beginning November 13, 1986.

By letter dated July 5, 1996, the Office requested appellant's attorney to submit the x-ray of appellant's spine taken on June 11, 1985. By telephone call on August 8, 1996 and letter dated August 13, 1996, this attorney advised the Office that he no longer represented appellant, that appellant had picked up his file, and that the Office's July 5, 1996 letter had been forwarded to appellant. By decision dated August 14, 1996, the Office found that the evidence failed to demonstrate a causal relation between appellant's June 10, 1985 injury and his claimed recurrence of disability of November 13, 1986. The Office noted, "we have not received the

¹ Docket No. 91-1294.

² Docket No. 94-1646.

requested x-ray for review and therefore cannot have it reviewed for further development of the claim.”

By letter dated November 6, 1996, appellant requested reconsideration, stating that, pursuant to the Office’s July 5, 1996 letter, he had unsuccessfully attempted to find the June 11, 1985 x-ray, and that on October 4, 1996 he “received the crumpled, folded, and mutilated x-ray of June 11, 1985 stuffed into a large brown envelope” from the Office. Appellant stated that he would return the x-ray to the Office upon request. The record contains a September 30, 1996 letter from the Office to appellant, stating, “Please find enclosed your x-rays of [June 11, 1985].” By decision dated February 6, 1997, the Office refused to reopen appellant’s case for further review of the merits of his claim.

The Board finds that case is not in posture for decision.

In its August 14, 1996 decision, the Office denied appellant’s claim for the reason that appellant had not submitted the June 11, 1985 x-ray needed to adjudicate his claim. The subsequent correspondence from the Office and appellant, however, indicates that the Office, at the time of its August 14, 1996 decision, had appellant’s June 11, 1984 x-ray in its possession. The August 14, 1996 decision was thus improper.

Since the Office has returned the June 11, 1985 x-ray to appellant, it should, on remand, obtain this x-ray from appellant. The Office should then refer this x-ray, the other relevant x-rays and the computerized tomography scan to an impartial medical specialist for a reasoned medical opinion whether appellant sustained a subluxation of the spine in his June 10, 1985 employment injury. The Office should then issue an appropriate decision.

The decision of the Office of Workers’ Compensation Programs dated August 14, 1996 is set aside and the case remanded to the Office for further action consistent with this decision of the Board.

Dated, Washington, D.C.
May 17, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member